IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

GIFT TAX REFERENCE No 30 of 1986
AND
GIFT TAX REFERENCE No 30A of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH Sd/-
and
Hon'ble MR.JUSTICE D.A.MEHTA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

Smt.MANA SARABHAI
Smt.SHYAMA SARABHAI
Versus
COMMISSIONER OF GIFT TAX

Appearance:
MR RK PATEL FOR MR KC PATEL for Applicant.
MR MANISH R BHATT for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 06/09/2001

COMMON JUDGEMENT

(Per : MR.JUSTICE D.A.MEHTA)

The Income Tax Appellate Tribunal, Ahmedabad Bench 'A' has referred the following question for the opinion of this Court in case of the aforesaid two assessees :

"Whether, on facts and circumstances and evidence on record, Tribunal was justified in law and in fact in holding that the disclaimer made by the assessee would come within the scope of Sec.4(1)(c) of the Gift-tax Act?"

2 Though there are two different assesses it appears that through oversight a common Paper Book was prepared and the office has registered only one reference being Gift Tax Reference No. 30 of 1986. We, therefore, direct that Gift Tax Reference No.30 of 1986 shall be in case of Smt.Mana Sarabhai while reference in case of Smt.Shyama Sarabhai shall be treated as Gift Tax Reference No.30A of 1986.

3 We have heard Mr.R.K.Patel appearing on behalf of the applicant-assessee and Mr.M.R.Bhatt appearing on behalf of the respondent-Revenue. It is common ground between the parties that the facts are identical in both the matters and the Tribunal has also disposed of the appeals by a common order.

4 For the previous year relevant to assessment year 1976-77, the assessee made a disclaimer on 21/7/1975 in relation to the share in the corpus of trust which the assessee was entitled to receive sometime in February,1976. The Gift Tax Officer sought to tax the event as taxable gift. The assessee's claim was that such disclaimer did not amount to gift in view of the fact that it was merely non acceptance of gift i.e. the assessee had given up the possible interest in share of corpus before such interest accrued to her. It was further stated that Section 4(1)(c) of the Gift-tax Act,1958 did not refer to the term 'disclaimer`, and hence such an act was not intended to fall within the definition of deemed gift. The Gift Tax Officer rejected the contention of the assessee and further held that the disclaimer made before seven months of entitlement to share from the corpus of the trust was not a bonafide action.

5 The assessee preferred an Appeal before the Commissioner of Gift Tax (Appeals). The Commissioner of

Gift Tax (Appeals) following the decision of this Court in the case of Commissioner of Gift Tax vs. Ansuya Sarabhai, 133 ITR 108 allowed the appeal of the assessee on this count. However, before the Tribunal, revenue in its appeal pointed out to the Tribunal that as the disclaimer had not been found by the Gift Tax Officer to have been made bonafide it should be held to be a taxable gift under section 4(1)(c) of the Act. The Tribunal accepted the contention raised on behalf of the revenue and allowed the revenue's appeal on this count.

6 At the time of hearing Mr.R.K.Patel reiterated the submissions raised before the lower authorities and further submitted that the decision of this Court in the case of Smt.Ansuya Sarabhai had been affirmed by the Supreme Court in the case of Smt. Ansuya Sarabhai, 239 ITR 262 and hence the question should be answered in favour of the assessee.

7 Having heard both the sides we find that it is not possible to disagree with the view taken by the Tribunal, even after taking into consideration the decision of the Supreme Court in the case of Smt.Ansuya Sarabhai (supra). In the reported decision the Apex Court has categorically noted "the transaction was held to be bonafide". It is in the backdrop of this finding recorded by the Tribunal that the matter was decided in favour of the assessee in the aforesaid case. However, so far as the facts of the present case are concerned, the finding recorded by the Gift Tax Officer as well as the Tribunal is that transaction is not bonafide.

8 In light of this finding of fact we hold that the Tribunal was justified in holding that the disclaimer made by the assessee would come within the scope of Section 4(1)(c) of the Gift Tax Act. The question referred to us in both the references is therefore answered in the affirmative i.e. against the assessee and in favour of the revenue.

9 The References are disposed of accordingly with no order as to costs.

Sd/- Sd/-
(M.S.Shah,J) (D.A.Mehta,J)

m.m.bhatt